



Preparing and Presenting the Agency's Position at Impasse

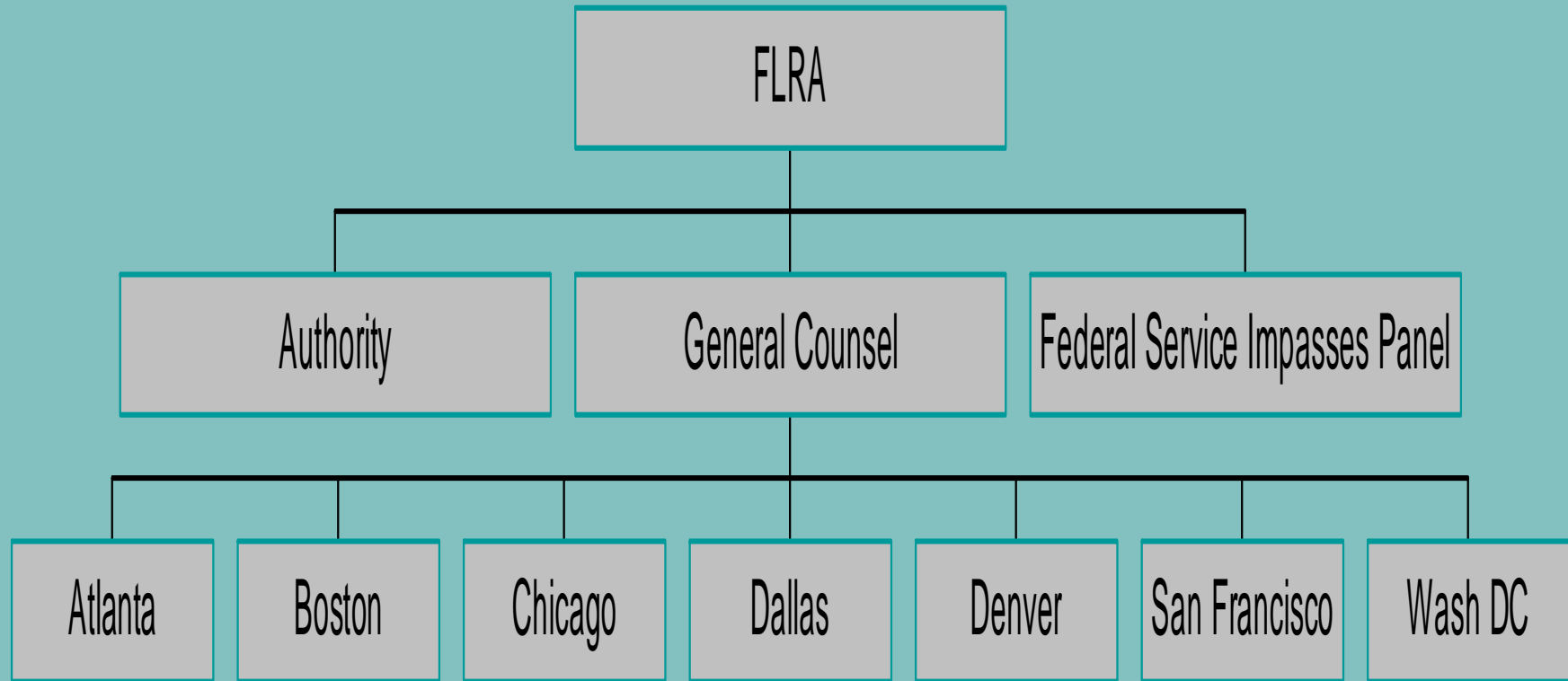


Presented by Lisa Belasco

■ Seminar Objectives

- Overview of the FSIP
- FSIP procedures
- Effective strategies for presenting your agency's case

Federal Labor Relations Authority



■ Federal Service Impasses Panel

Seven presidential appointees; one serves as
Chair

- Part-time positions

Panel staff – executive director and staff

■ Laws and Regulations

- 5 U.S.C. § 7119 – Negotiation Impasses; FSIP
- 5 U.S.C. § 7116(a)(6) & (b)(6) -- ULPs
- 5 C.F.R. Part 2471 – Panel Procedures
- 5 C.F.R. Part 2472 – Special Procedures for Alternative Work Schedule issues



■ Bargaining process

- Negotiations

- Mediation

- Impasse

- The Panel is the federal sector alternative to striking

■ Bargaining process (Cont'd)

- Agency must maintain the status quo until bargaining, including impasse procedure, is complete
 - Exception for exigent circumstances: necessary functioning of the agency
- Failure to maintain the status quo = ULP
 - 5 U.S.C. § 7116(1), (5), (6)

■ Bargaining process (Cont'd)

- The term impasse means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement. 5 C.F.R. § 2470.2(e).

The Panel's Role in Federal Sector Bargaining

■ 5 U.S.C. § 7119

(b) If voluntary arrangements, including the services of FMCS or any other third-party mediation, fail to resolve a negotiation impasse—

(1) either party may request the FSIP to consider the matter

The Panel's Role in Federal Sector Bargaining (Cont'd)

■ 5 U.S.C. § 7119(c)(5)

- (A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either--
- (i) recommend to the parties the procedures for the resolution of the impasse; or
 - (ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

The Panel's Role in Federal Sector Bargaining (Cont'd)

■ 5 U.S.C. § 7119(c)(5)

(B) If the parties do not arrive at a settlement after assistance by the Panel under subsection (A) of this paragraph, the Panel may--

- (i) hold hearings
- (ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided under section 7132 of this title; and
- (iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

The Panel's Role in Federal Sector Bargaining (Cont'd)

■ 5 U.S.C. § 7119(c)(5)

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

After the Panel issues a decision and order...

No direct right to appeal

- Agency head review
- Subsequent agreement between the parties

Failure to follow Panel order = ULP

- 5 U.S.C. § 7116(a)(6)

■ Panel Procedures

- One or both parties files Request for Assistance
 - Union has to file with the Panel – not just contact a mediator -- in order to stop agency from implementing change once agency declares impasse and gives notice of implementation.
 - 24 FLRA 786
 - 17 FLRA 896
 - 35 FLRA 940

■ Panel Procedures (Cont'd)

■ Request for Assistance

■ Form is on website www.flra.gov

- Names of parties
- The issues at impasse and the requesting party's summary position thereon
- Number and length of bargaining days
- Number and length of mediation days

■ Panel Procedures (Cont'd)

- Investigation by Panel staff
 - Background information
 - Any dispute as to impasse?
 - Did parties bargain enough?
 - Duty to bargain issues?
 - Preference as to which procedure is used to resolve impasse

■ Panel Procedures (Cont'd)

- Different Panel procedures– 5 C.F.R. § 2471.6
 - Mediation-Arbitration
 - Informal conference
 - Factfinding
 - Written submissions
 - Show cause order
 - Oral presentation
 - Binding arbitration

■ Panel Procedures (Cont'd)

- Possible outcomes:
 - Panel asserts jurisdiction and determines procedure to be used to resolve impasse
 - Panel sends the parties back to the bargaining table
 - Panel sends the parties back to mediation
- Panel has broad discretion

■ Preparing to Present Your Case

Goal: Convince the Panel to adopt the agency's proposals.

Proposal by proposal

Section by section

Decide: What is the most effective way to present your case?



Preparing to Present Your Case (Cont'd)

What valid purpose is the union's proposal intended to serve?

What burden would the union's proposal create?

Is there a less burdensome way to address the union's concern?

Preparing to Present Your Case (Cont'd)

Gathering your “evidence”

- What are your best arguments?
- What facts support your position?
- Is there objective evidence you can present?

Know your audience



Preparing to Present Your Case (Cont'd)

Preparing your managers

- Settlement options

- Bottom lines

Preparing your bargaining team

- Who do you take?

- Who talks?

- Written materials?



Preparing to Present Your Case (Cont'd)

Sources of information:

- Practices at other agencies

- Practices with other bargaining units at your agency

- Panel decisions (non-precedential)

■ Handling Negotiability Issues

Panel does not decide negotiability issues

- Declare proposal non-negotiable

v.

- Offer a negotiable counter-proposal

■ Issuance of Panel decision

- Add language to the proposals on which you reached agreement
- Execute agreement?
- Conduct agency head review – within 30 days of the date on which no further action is necessary to finalize a complete agreement
- Implement terms



Questions